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IN THE

Supreme Court of the United States

October Term, 1945

JACK PARKER, ISIDOR M. SAKS, MELVIN CAPLAN, DAVID WERTH, C. CLARENCE KASKEL, MORTON H. BARON, ROBERT HERMANN, SAMUEL OGUS, CHARLES MASLOW, GEORGE WILLETT, HARRY WIENER, CHARLES GOLDMAN, DAVID RUDBERG, WILLIAM I. HOHAUSER AND SYDNEY MAYBAUM,

Petitioners,

—*vs*—

PAUL A. PORTER, Price Administrator.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

ALEXANDER PFEIFFER,
Attorney for Petitioners.

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equity and the underlying obligation of the corporation, attributable to their apartments at the time of their stock purchase (pp. 8, 9).

When the foregoing applications were made for certificates of eviction, the Office of Price Administration, in accordance with its established practice, served copies of the petition together with notices on the petitioners, advising them that they might submit any information they desired with reference to the matter and stating that failure to return the petition with their signed statements would result in the entry of an order upon the basis of the facts available to the Rent Director. Pursuant to this notice, the various tenants filed statements objecting to the granting of certificates of eviction; and the proceeding was thereafter referred to the Chief Branch Attorney of the New York City Defense-Rental Area, who on a hearing took approximately 1,000 pages of testimony. He subsequently recommended denial of the applications for certificates of eviction, giving as reasons that the purchasers did not fulfill the obligation of making payment of 20% of the equity and underlying obligation of the corporation attributable to their apartments, as required by the Housing Regulation; that the letter of interpretation as to hardship issued by the Administrator, and interposed in the proceedings, was based upon misrepresentations and fraudulent statements by the real estate brokers who were acting as managers and agents for the owning corporation; that the entire presentation of the share-ownership plan by the sponsors was permeated with the implication that it was a very substantial financial transaction involving important financial commitments on the part of the sponsors, whereas the actual fact was they had not a penny invested but were operating on an option, in the final exercise of which they hypothecated the very shares of stock which had been sold to purchasers, after payment therefor had been made, for

a loan of $40,000 from a New York bank; and that this loan was for the purpose of enabling the sponsors to buy three apartments, none of which they intended to occupy, but for the sole purpose of showing a greater number of sales than were actually consummated (pp. 12-19, 42, 43).

The findings and recommendations of the Chief Branch Attorney were sustained by the Area Rent Director of the City of New York, and were thereafter confirmed by the Acting Regional Administrator of the Office of Price Administration for Region II in an opinion in which he stated that the purchasers had not complied with the provisions of Section 6(b)(3) of the Rent Regulation of the Office of Price Administration which required that certificates relating to eviction should only be issued if 80% of the tenants in occupancy at the time of the issuance of the certificates became purchasers of their apartments. The Acting Regional Administrator further denied the claim that the purchasers were entitled to the certificates under the "hardship" provision under the above section, and sustained the findings of fraud and misrepresentation in the procurement of the letter of interpretation. Thereafter, the action of the Chief Branch Attorney, the Area Rent Director, and the Acting Regional Administrator, was reversed by order of the Price Administrator who granted certificates of eviction to the purchasers (pp. 9-11, 44).

Upon entry of the order granting certificates of eviction, the tenants concerned filed a protest with the Administrator setting forth that the purchasers failed to comply with Section 6(b)(2) of the Rent Regulation, and in each individual case had paid in cash less than the proportionate share of the 20% of the stock purchase price required to be paid in good faith under that section; that the letter of interpretation was unjustified, uncalled for, unwarranted, and secured without a basis in fact or in law; that the facts and documents submitted by the managers of the

owning corporation seeking the letter of interpretation as to hardship contained misrepresentations and constituted a fraud upon the Administrator; that the owning corporation was not a cooperative corporation or association, and, therefore, did not come within the provisions of the laws and regulations of the Office of Price Administration as to the eviction of tenants of cooperative apartments; that the sponsors of the cooperative plan acted in bad faith throughout the proceedings; that the property owned by the corporation had no equity over and above its encumbrances; and that the plan for the sale of the shares of stock was fraudulent and infected with bad faith and misrepresentation (pp. 12-19).

The foregoing protest was dismissed by the Price Administrator on November 2, 1945, on the ground that complainants had no standing to protest his order granting certificates of eviction, since Section 203(a) of the Emergency Price Control Act of 1942, as amended, provides that only persons "subject to" a regulation or order may file a protest thereto with the Administrator; that the Rent Regulations issued by the Administrator or his representatives prohibit or require action only by landlords; and that, therefore, only such persons, and not tenants, are "subject to" the regulations and orders within the meaning of the Act (p. 10).

The petitioners thereupon filed a complaint in the United States Emergency Court of Appeals under Sec. 204(a) of the Emergency Price Control Act. The respondent moved to dismiss the complaint upon the ground that the petitioners were without standing to file it. On March 13, 1946, the Emergency Court of Appeals entered a judgment dismissing the complaint (pp. 1-20, 23, 88). Three opinions were rendered:

The majority opinion held that the essential purpose of the Emergency Price Control Act was not to accord to

tenants administrative and judicial review of the respondent's action in permitting their landlords to undertake eviction proceedings against them, that said Act does not give tenants any right to remain in possession of defense area housing accommodations, which they might happen to occupy, and that, therefore, no rights of the tenants were affected by respondent's order authorizing eviction so as to give said tenants standing to protest under Sec. 203(a) of the Emergency Price Control Act, nor to file a complaint under Sec. 204(a) thereof. (pp. 74-78).

The concurring opinion, rendered "with some hesitation", held that tenants had no standing to bring the regulations or orders of the respondent under judicial review, that the respondent acts in protection of the tenants' interests, that the tenants have no further legal interest in continued possession once a determination has been made by the respondent in favor of the landlord and that further delays under the act would result if the tenants were granted a right to protest respondent's orders; that to allow tenants the right to file protest and complaint would subject the landlord to too many reviews of respondent's order (pp. 78, 79).

The dissent held that the tenants were "subject to" the orders of the respondent granting certificates to the landlord authorizing him to commence eviction proceedings, that one of the purposes of the Emergency Price Control Act is to give tenants a right to remain in possession of the defense-rental area housing accommodations which they might happen to occupy, that both the statement of purposes of the Act and the provisions thereof make it clear that one of the purposes of the act is to protect the tenants against being forced out of their housing accommodations without good reason, that the Rent Regulation for Housing in the New York City Defense-Rental Area gives the tenants a right to continuing occupancy, that the tenants have a right to challenge any contingency which would deprive them of

possession, that the tenants had, pursuant to invitation from the Office of Price Administration, filed statements objecting to the granting of certificates of eviction on the original hearings and proceeded with such hearings to their conclusion and that the tenants are entitled to file a protest to the respondent's order and to contest the issues, as persons "subject to" the order within the intendment of Sec. 203(a) of the Emergency Price Control Act, as amended (pp. 79-87).

Specification of Errors.

The United States Emergency Court of Appeals erred:

1. In dismissing the complaint filed by the petitioners under Sec. 204(a) of the Emergency Price Control Act, as amended, to review the prior action of the respondent in dismissing petitioners' protest on procedural grounds.

2. In failing to hold that the petitioners, tenants of housing accommodations with respect to which the respondent has ordered a certificate of eviction to be issued, are persons "subject to" such order within the meaning of Sec. 203(a) of the Emergency Price Control Act with standing to file a protest to said order under Sec. 203(a) of said act.

3. In failing to hold that under the defense-housing provisions of the Emergency Price Control Act, petitioners-tenants enjoyed a right to continued occupancy of defense-housing accommodations and in holding that the sole purpose of said defense-housing provisions of the Emergency Price Control Act was to control the amount of rents of such accommodations.

4. In failing to hold that one of the purposes of the Emergency Price Control Act to accord to petitioners,

tenants of defense-housing accommodations, administrative and judicial review of the action of respondent in permitting the landlord of petitioners to undertake eviction proceedings against petitioners.

5. In failing to hold that under the Rent Regulation for Housing in the New York City Defense-Rental Area, promulgated by the respondent, petitioners had a vested interest in continued occupancy of the defense housing of which they were in possession subject only to being divested by the existence of circumstances set forth in the law and the regulation and that said tenants had standing to inquire into the validity and merits of the application made to divest them from possession and occupancy, and to protest the order of the respondent which granted certificates authorizing their eviction.

6. In holding that the respondent's determination that the evictions sought by the landlords were not inconsistent with the purpose of the Act or of the Regulation is not subject to administrative review by the respondent or judicial review by the Emergency Court of Appeals, at the instance of the petitioners-tenants whose evictions are authorized by respondent's orders.

7. In holding that tenants have no right to protest the Price Administrator's order authorizing petitioners' eviction where said order is contested as failing to comply with the fundamental intent of the Emergency Price Control Act and Regulation to prevent an evasion and circumvention by recognizing a cooperative ownership plan which did not comply with the provisions of Section 6(b)(2) of said Regulation as to requisite cash payments and which was based upon fraudulent misrepresentations, as found by the local Office of Price Administration authorities and confirmed by Regional authorities.

Reasons for Granting the Writ.

The questions raised by this petition are of great public importance, involving the basic meaning and construction of the defense-housing provisions of the Emergency Price Control Act and the Regulation promulgated thereunder. The issue tendered by the majority and minority opinions of the Emergency Court of Appeals is whether a prime purpose of the defense-housing provisions of the Emergency Price Control Act is to accord to tenants of defense-housing accommodations a right to continuing occupancy of their premises, making them persons "subject to" the orders of the Price Administrator (under Sec. 203(a) of the Emergency Price Control Act), as held by the minority opinion herein, with standing to protest the Price Administrator's certificate authorizing their eviction and to file a complaint in the Emergency Court of Appeals (under Sec. 204(a) of the Act), or whether the purpose of said Act is to control rents of such accommodations, depriving tenants of any right to protest their eviction.

The interpretation of the purposes of the defense-housing provisions of the Emergency Price Control Act has never before been declared by this Court. The construction of the Act affects the constitutional rights of the multitude of tenants residing in defense-housing areas to the due process of hearings in matters where the Price Administrator authorizes eviction proceedings. An extremely acute housing shortage and emergency exists throughout the nation, and the question of the rights of tenants to occupancy of defense-housing is critical to millions. "Eviction would mean, in the present housing emergency, that such tenants with their families, including, in this case, helplessly stricken invalids, newly returned veterans of the war, children, and aged people would, in all probability, be deprived of living quarters in the City of New York, where

they have been in the past, and are now, bona fide residents," to quote from Judge McAllister's dissenting opinion in the Emergency Court of Appeals, discussing the effect of eviction in the case at bar.

A construction by this Court of the fundamental rights of tenants to continue occupancy of defense-housing accommodations is required to clarify the position of tenants throughout the nation and to provide assurance that tenants cannot be ousted from possession by alleged cooperative ownership plans which are attacked for failure to comply with the Regulation and because of fraud and misrepresentation, without being accorded the right to administrative protest and judicial review thereof.

The interpretation of Secs. 203(a) and 204(a) of the Act by the respondent and by the majority of the Emergency Court of Appeals are in direct conflict with the plain wording and intent of the Statute and Regulation and deprive the petitioners of a valuable right to continued occupancy of their apartments without the right to test the unreasonableness of the respondent's order authorizing their eviction.

1. *The petitioners were "subject to" the respondent's order under the Emergency Price Control Act and the Regulation with standing to file a protest under Sec. 203(a) of the Act for administrative review, and a complaint under Sec. 204(a) for judicial review, of respondent's order authorizing petitioners' eviction.*

Petitioners' protest was filed pursuant to Sec. 203 (a) of the Emergency Price Control Act, which provides that:

> "at any time after the issuance of any regulation or order * * *, any person subject to any provision of such regulation, or order or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision * * *."

The complaint in the Emergency Court of Appeals was filed by petitioners pursuant to Sec. 204 (a) of the Act, which provides that:

> "any person who is aggrieved by the denial or partial denial of his protest may * * * file a complaint with the Emergency Court of Appeals * * * specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part."

Even under the strictest construction of the Act, petitioners are persons "subject to" respondent's order authorizing their eviction. Both the majority and minority opinions of the Emergency Court of Appeals in the instant case rejected the Administrator's contention that a person is subject to a regulation or order within the meaning of Sec. 203 (a) only if the regulation or order prohibits or requires action by him. The right to file a protest against a regulation or order of the Price Administrator was held not to be restricted to those whose action was prohibited or required, since the Price Administrator himself, in Sec 24 of Revised Procedural Regulation No. 1, provided an exception to his interpretation that a person is "subject to" the provision of a maximum price regulation only if such provision prohibits or requires action by him. This exception was provided for the benefit of the producer of an agricultural commodity who may complain that a particular price regulation violates Sec. 3 of the Emergency Price Control Act, or the Stabilization Act, which are designed to protect such producers against the depressing effect upon their prices, of the processor's ceiling, which exception is found in the following portions of the Revised Procedural Regulation (Revised Procedural Regulation No. 1, Sec. 1300.24; 7 Fed. Reg. 8961):

"That a producer of an agricultural commodity shall be considered to be subject to a maximum price regulation for the purpose of asserting any right created by Sec. 3(c) of the Emergency Price Control Act of 1942 * * * for the benefit of producers of such an agricultural commodity. Any protest filed by a person not subject to the provision protested, or otherwise not in accordance with this Revised Procedural Regulation, may be dismissed by the Administrator."

This proviso clearly extends the concept of the phrase "subject to" and demonstrates a departure by the Administrator from a consistent and uniform construction that a person is not subject to, and, therefore, cannot protest, a regulation, unless, by the terms of such regulation, he is prohibited from taking, or required to take, some action.

Furthermore, the Emergency Court of Appeals in *Illinois Packing Co.* v. *Snyder*, 151 Fed. (2d) 337 (ECA 1945), held that a person who contended that he was arbitrarily and capriciously discriminated against in a regulation providing for the payment of subsidies, was a person "subject to" the regulation within the meaning of Sec. 203 (a). In passing upon the issue thus tendered, the Emergency Court of Appeals said:

"In *Ruka Coal Co.* v. *Brown*, 133 F. (2d) 949 (E. C. A., 1943), we accepted the Price Administrator's interpretation of this provision of the Act to the effect that a person is 'subject to' a provision of the maximum price regulation 'only if such provision prohibits or requires action by him.' While this interpretation may be appropriate, so far as concerns, the standing of a person to protest a price regulation, it is clearly not an appropriate criterion for determining the standing of a person to protest the kind of regulation now before us,

a regulation setting up a scheme of compensatory subsidy payments under defined terms and conditions. If anybody could be 'subject to' a provision of the subsidy regulation, complainant certainly would meet this requirement, since it *claims to be excluded from the subsidy by a discriminatory and unlawful condition inserted in the subsidy regulation* by Amendment No. 2." (Italics supplied.)

Since in one case the Emergency Court of Appeals declared a person "subject to" a regulation because he had been excluded from its benefits by a discriminatory condition, and in another, the Administrator, pursuant to the broad discretion conferred upon him by the Statute, provided by regulation that a party was "subject to" the regulation, when otherwise he would have had no claim or standing to file a protest, it is apparent that the tenants (petitioners herein) likewise are "subject to" the orders of the Administrator granting certificates to the landlord authorizing him to commence eviction proceedings.

The petitioners were "subject to" the Price Administrator's order, since there may be a distinction, but no pragmatic difference, between the Price Administrator's authorizing the landlord to evict petitioners and the eviction proceedings themselves under local law, the necessary result of which is a final order causing the removal of petitioners from their homes. The equivalence of permission to evict and the subsequent eviction proceedings is underscored by the fact that the petitioners have no defense to the summary proceedings at local law which could be asserted in the Municipal Court of New York City, for by Section 204 (d) of the Emergency Price Control Act of 1942, said Court has no jurisdiction to consider the validity of an order of the Price Administrator. The issues of fraud in the procurement of the letter of interpretation of hardship, which formed the basis for

the issuance of the said certificates relating to eviction, cannot be attacked collaterally in the Municipal Court. Nor can the question whether the purchasers had complied with the prerequisites of Section 6 (b) (2) of the New York City Regulation for Housing be properly decided in the Municipal Court. Similarly, the question whether the cooperative ownership plan sponsored by Messrs. Earle and Carver was a true cooperative, as defined by Section 85 of the New York Cooperative Corporation Law and thereby entitled participants in the plan to proceed under subdivision II of Section 6(b)(2) of the New York City Rent Regulation for Housing to obtain certificates of eviction of the complainants herein, be decided in summary proceedings in the Municipal Court of the City of New York. Under Section 204 (d) of the Emergency Price Control Act the Emergency Court of Appeals has exclusive jurisdiction to test the propriety of the order of the Price Administrator issuing the certificates of eviction and the subsequent dismissal of the complainants' protest thereto.

The provisions of the Emergency Price Control Act, which are to be accorded a liberal construction to effectuate their highly remedial purposes (*Automatic Fire Alarm Co.* v. *Bowles,* 143 Fed. (2d) 602 (E. C. A., 1944) were given a broad interpretation in *Yakus* v. *United States,* 321 U. S. 414, where this Court, speaking through Chief Justice Stone liberally construed the provisions of the Emergency Price Control Act for judicial review of the Administrator as follows, at page 433:

> "In addition, the present Act seeks further to avoid that confusion by restricting judicial review of the Administrator's determination to a single court. Such a procedure, so long as it affords *to those affected* a reasonable opportunity to be heard and present evidence does not offend against due process. *Bradley* v. *Richmond,* 227

U. S. 477; *First National Bank* v. *Weld County*, 264 U. S. 450; *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337." (Italics supplied.)

The use of the expression, "those affected", by the Chief Justice shows clearly the intent of the Court to construe the judicial review provisions of the Emergency Price Control Act as all inclusive rather than restricted to a particular class of persons. In defining the power of the Emergency Court of Appeals to review actions of the Administrator, Mr. Justice Stone continued at page 437:

> "The Emergency Court has power to review all questions of law including the question where the Administrator's determination is supported by evidence, and any question of the denial of due process for any procedural error appropriately raised in the course of the proceedings."

It therefore appears that although Congress was impelled by the pressure of the emergency situation to authorize summary action by the respondent in the first instance, this Court in construing this Act made it clear that the action of the Administrator would always be subject to later judicial review. (*Yakus* v. *United States* (1943), 321 U. S. 414, 442.)

The legislative history of the Emergency Price Control Act of 1942, as amended, shows the clear intent of Congress to permit any one affected by an order of the Price Administrator to appeal therefrom to the Emergency Court of Appeals. Thus, the declaration of purposes, as set forth in the report of the Committee of Conference on the disagreeing votes of the two houses of Congress, on the amendment of the Senate to House of Representatives Bill No. 5990, which was the proposed Emergency Price Control Act as reported in Volume 88 of the Congressional Record at page

661, January 26, 1942 (four days before the effective date of the Act) stated one of the policies of the Act to be:

"(11) the protection of the interests of those subject to the Act by providing procedures for administration and review."

The Record defined this policy at page 663 as follows:

"*Administration and Review.* Both the House bill and the Senate amendment vested the administration of the bill in a single Price Administrator * * * the Senate amendment provided (2) * * * direct judicial review of regulations and orders of the Administrator by an Emergency Court of Appeals composed of federal judges designated for service at such court by the Chief Justice of the United States."

The Record continues as follows, pages 663, 664:

"The Senate amendment also provided that a statement of considerations must accompany every regulation or order establishing a maximum price, *that every such regulation or order should be subject to protest proceedings*, that if any protest should be denied the Administrator must advise the protestant of the grounds upon which such denial was based * * *."

The Conference agreement adopted the provisions of the Senate amendment (Volume 88 Congressional Record, p. 664).

Congressman Henry V. Steagall, speaking in behalf of the Conference Report stated at pages 664, 665, Volume 88 Congressional Record:

"Another provision that has been controversial throughout the entire consideration of the bill hinges on the

question of the authority to be established for the administration of the law. The House bill provided for the administration of the law by a single Administrator whose office was created by the bill. There was included in the House bill, as reported by the Committee on Banking and Currency, a provision establishing a special Appellate Court of not less than three circuit or district court judges, named by the Chief Justice of the United States, with the right to add additional members whenever required, the Court to be permitted to sit in divisions when necessary. *The provision also gave anybody dissatisfied with an order, ceiling or regulation of the Administrator the right to appear and protest the action of the Administrator.* The Administrator was required to take action on such protest within 30 days. Thirty days would be required in which an appeal might be made to the Emergency Court of Appeals established under the bill, with the duty of the Court to review the decision of the Administrator in establishing ceilings or other regulations under the bill.

"The Conference Report follows substantially the bill reported by the House Committee on Banking and Currency. That is the plan embodied in the Conference Report." (Italics supplied.)

During the course of the debate in the House on the Conference Report, Congressman William T. Pheiffer of New York, speaking in behalf of the Report, stated at page 687:

"* * * under the provisions of the Conference report, when the Price Administrator after all this investigation which he makes fixes a price, *anyone who is aggrieved by reason of that decision has the right to enter*

a protest. He may file a protest and within 30 days he has a right to have a decision upon his protest. If that is denied, then he has the right to appeal to a court, not an administrative board but an independent court set up and established under the provisions of the Conference report, the members of which court are appointed, if you please, by the Chief Justice of the United States Supreme Court. That court has the right and it is the duty to review the proceedings under which the price ceiling was fixed by the Administrator. If the Administrator does not follow the law which this Congress lays down, he is reversed and may I say that we are determining that policy. It is a legislative policy. * * *. The Congress lays down the standards and establishes the procedure and tells and directs the Administrator what he shall do." (Italics supplied.)

A motion to recommit the Conference Report to the Committee of Conference was defeated (Volume 88 Congressional Record, p. 688) and the Conference Report was confirmed by the House (p. 688) and by the Senate (p. 725). No extensive discussion concerning the Administration and Review provisions of the Conference Report appeared in the report of the debate thereon in the Senate.

2. *Under Sec. 6(a) of the Rent Regulation for Housing in the New York City Defense-Rental Area, promulgated by respondent, tenants are given a vested right to remain in possession of defense-area housing, subject to divestiture by eviction under Sec. 6(b)(2) of said regulation by a purchaser whose cash payments aggregate 20% or more of the purchase price. Having asserted that the purchasers failed to comply with said Regulation and that their application was based on fraud and misrepresentation, petitioners are entitled to a judicial examination into the purchasers' compliance with the conditions which may operate to divest*

them of their occupancy, and to protest respondent's order of eviction based on the assumption that such conditions were operative. To deny petitioners such right is a deprivation of property without due process of law.

Sec. 6(a) of the Rent Regulation for Housing in New York City Defense-Rental Area, promulgated by respondent, provides:

> "*Removal of Tenant*—(a) *Restrictions on removal of tenant.* So long as the tenant continues to pay the rent to which the landlord is entitled, *no tenant shall be removed from any housing accomodations,* by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary thereto, *unless:*" (Italics supplied.)

(There follow certain conditions having to do with the tenant's refusal to renew the lease, refusal of access to the landlord, violation of obligation of tenancy or committing nuisance, demolition, or alteration by landlord in accordance with law, and occupancy by landlord under a right to buy or a right to possession acquired prior to November 1, 1943.)

Section 6(b)(2) of the Regulation provides, among other matter, the following:

> "*Occupancy by purchaser. Removal or eviction of a tenant of the vendor,* for occupancy by a purchaser who has acquired his rights in the housing accommodations

on or after November 1, 1943 *is inconsistent with the purposes of the Act and this regulation and would be likely to result in the circumvention or evasion thereof,* unless (i) the payment or payments of principal made by the purchaser, excluding any payments made from funds borrowed for the purpose of making such principal payments, aggregate 20% or more of the purchase price, and (ii) a period of three months has elapsed after the issuance of a certificate by the Administrator as hereinafter provided. For the purpose of this paragraph (b) (2), the payments of principal may be made by the purchaser conditionally or in escrow to the end that they shall be returned to the purchaser in the event the Administrator denies a petition for a certificate. If the Administrator finds that the required payments of principal have been made, he shall, on petition of either the vendor or purchaser, issue a certificate authorizing the vendor or purchaser to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law at the expiration of three months after the date of issuance of such certificate." (Italics supplied.)

The Regulation clearly and unambiguously defines the nature of petitioners' interest in and to the contir ed occupancy of the defense-housing accommodations of which they are in possession: This interest is a fully vested right to possession unless and until certain contingencies arise. Sec. 6(a) of the Regulation states that so long as rent is paid, "no tenant shall be removed from any housing accommodations by action to evict or to recover possession * * * *unless*" certain conditions exist which may act to divest him of possession. Petitioners contend that it is the intention of the Act and the Regulation to give them the right to challenge these conditions which serve to divest and defeat their continuing occupancy granted by the Regula-

tion, by filing a protest under Sec. 203(a) of the Emergency Price Control Act.

In order to divest petitioners of their occupancy, a purchaser must comply strictly with the various provisions of Sec. 6(b)(2) of the Regulation: The payments of principal made by the purchaser, excluding any payments made from funds borrowed for the purpose of making such principal payments, must aggregate 20% or more of the purchase price and the removal or eviction of a tenant must not be "inconsistent with the purposes of the Act and this Regulation" and must not be likely "to result in the circumvention or evasion thereof". The petitioners contend that the "purchasers" in each individual case paid in cash less than the proportionate share of the 20% of the stock purchase price required to be paid in good faith under the Regulation; that the so-called purchasers did not, in fact and in law, become owners of the apartments; that the representations upon which such ownership is asserted are fraudulent; that the whole plan by which the original owners procured an interpretation of hardship, upon which the rights of the so-called purchasers depend, was a sham; and that the proceedings in which the order was secured from the respondent by virtue of which it is sought to evict them are permeated with fraud and constitute a scheme to obtain a large sum of money as the result of the sale of the apartments in the property involved, in which there was no equity over and above the underlying encumbrances and that the very shares of stock of the owning corporation which were agreed to be sold to the "purchasers" were hypothecated as collateral security for a loan which was used by one of the owners of the stock of the owning corporation to acquire proprietary leases and that the entire course of the proceedings resulting in the order permitting petitioners' eviction "was and is unfair, unreasonable, arbitrary, inequitable and capricious and not in accordance with law" (p. 19).

Respondent having moved to dismiss the complaint, these allegations of the complaint must be deemed to be true. Petitioners contend that it is their right a judicial review of the propriety of the order which operated to divest them of their right to continued occupancy under Sec. 6(a) of the Regulation since petitioners claim that such contingencies did not become validly operative, that an order based upon the supposition that they had become operative was improvidently issued and that they are entitled in defending their possession of the apartments, to challenge such order on the ground that it was procured by fraud and misrepresentation and results in a deprivation of their rights. This claim is not only supported by the underlying purpose of the Act and the Regulation but is based on the repeatedly recognized constitutional right under the Fifth Amendment that no person shall be deprived of property without due process of law. Due process in the instant case surely should permit tenants, who are the objects of certificates of eviction, to be accorded a reasonable judicial review of their objections to the propriety of the grounds upon which such certificates are bottomed. Petitioners have legal status as persons "subject to" an order permitting their eviction to file a protest to such order and, having been granted the right of continued occupancy by the Act and Regulation, subject to stated exceptions, to contest the validity and operability of such exceptions by which it is sought to deprive them of their rights of occupancy.

In *Bowles* v. *Willingham* (1943), 421 U. S. 503, this Court in passing on the constitutionality of the Emergency Price Control Act upheld the reasonableness of the procedure whereby no hearings were permitted to landlords before the effectuation of maximum rent orders. The Court, through Mr. Justice Douglas, at page 521, however, stated:

> "To require hearings for thousands of landlords before any rent control order could be made effective might

have diverted the program of price control * * *. *But where Congress has provided for judicial review after the regulations or orders have been made effective, it has done all that due process under the War emergency requires.*" (Italics supplied.)

The restriction in the majority opinions of the Emergency Court of Appeals of the right of the tenants to appeal from the Price Administrator's order, in the face of contentions that such order was procured by fraud and was contrary to the express provisions of regulations promulgated by the Administrator, results in depriving the tenants of property without due process of law.

To hold as the majority of the Court below did that the petitioners have no more than a "regulatory", as distinct from a property, or statutory, right to possession is to contravene not only the express purpose of the Act and the Regulation but to repose in the Price Administrator an unbridled discretion insofar as the rights of the tenants are concerned, foreclosing the tenants from any right to appeal from the Administrator's actions. To accede to this contention would be to hold that the action of the Price Administrator, which was challenged—first in the protest to the Price Administrator and reiterated in the complaint in the Emergency Court of Appeals as "unfair, unreasonable, arbitrary, inequitable and capricious and not in accordance with the law" (p. 19)—is final and that the Price Administrator, without hearing, had the power to reverse the report and findings of the Chief Branch Attorney, the Area Rent Director and the Regional Administrator, without subjecting his decision to judicial review by any court of law. Such holding would place the Price Administrator in the position of unchallengeable power to cause the eviction of tenants, capriciously, arbitrarily and inequitably (as is claimed in this case) at a time when an acute housing shortage prevails throughout the country, without permit-

ting such persons sought to be dispossessed to appeal from such arbitrary exercise of authority.

It could never have been the intention of Congress to constitute the respondent the sole judge of his own actions. Congress surely never intended that respondent would have the power to reverse three of his subordinates, without further hearing, and that his action in so doing, based on his sole judgment, would be unchallengeable in any court of law.

In the concurring opinion rendered in the Court below, it was said that the consequence of opening the door to judicial review would be to subject the landlord's right to recover possession to further delay during the pendency of protest proceedings instituted by the tenant followed by review proceedings in the Emergency Court of Appeals. Such "delays" are the "law's delays" of due process, of the right to a judicial review of the respondent's order. If a choice must be made between the "delay" of a court review of an eviction order, which is attacked as arbitrary and capricious, and the rights of the tenants to a full and fair hearing of their complaints, the choice should be exercised in favor of judicial review. Otherwise, under the guise of the argument of "delay", administrative injustice would be sanctioned. Any legal proceeding can be characterized as delay or "red tape", as the concurring opinion has it. Legal proceedings rather should be regarded as safeguards to rights which are not lightly to be denied. The persistent attempt in this case of the Price Administrator to shield his order of eviction from further administrative and judicial scrutiny, made after the Chief Branch Attorney, the Rent Director and the Acting Regional Director had found misrepresentation and failure of compliance with existing regulations, underscores the necessity for permitting tenants to protest under Sec. 203 (a), and to review any denial of such protest under Sec. 204 (a) of the Emergency Price Control Act.

3. *Petitioners, having been invited by the Office of Price Administration to submit information on the original hearing on the "purchaser's" applications for certificates of eviction, and having answered and participated in the hearing before the Chief Branch Attorney of the New York City Defense-Rental Area to its conclusion, had legal status to protest respondent's order which reversed the recommendations of the Chief Branch Attorney which was confirmed by the Rent Director and the Acting Regional Director. Petitioners were persons "subject to" such order under Sec. 203 (a) of the Emergency Price Control Act.*

When the "purchasers" of stock in the owning corporation filed petitions for certificates of eviction, pursuant to Sec. 6(b)(2) of the Rent Regulation for Housing in the New York City Defense-Rental Area, authorizing them to proceed under the local law to evict the petitioners from their apartments, the Office of Price Administration, in accordance with established practice, served copies of the petition, together with notices on all the tenants concerned, advising them that they might submit any information they desired with reference to the matter, and stating that failure to return the petition with their signed statements would result in the entry of an order upon the basis of the facts available to the Rent Director (pp. 77, 79, 80). Pursuant to this notice, the petitioners filed statements objecting to the granting of certificates of eviction. The proceeding was thereafter referred to the Chief Branch Attorney of the New York City Defense-Rental Area, who, on a hearing took approximately 1,000 pages of testimony. The Chief Branch Attorney's recommendation that the application for certificates of eviction be denied was sustained by the Area Rent Director of the City of New York, and thereafter confirmed by the Acting Regional Administrator of the Office of Price Administration for Region II (pp. 9-11).

The invitation to the petitioners to participate in the hearings was a practical construction of their rights by the

Office of Price Administration, and constituted the petitioners, in law, as indeed they were in fact, parties "subject to" the Administrator's orders authorizing their eviction. The only method that petitioners had under the Act to review the Administrator's order, which reversed recommendations made as the result of a hearing in which petitioners were invited to, and did, participate, was to file a protest to the Administrator's order. Respondent could not invite petitioners to participate in hearings and then deprive them of any further right of administrative or judicial review once he had issued an adverse order.

The majority of the Court below held that the invitation by the Administrator to the petitioners "was doubtless wise administrative procedure which enabled the Administrator to become fully informed with respect to all the facts which might have any bearing upon the questions raised by the petitions, but it did not, as the complainants urged, make the tenants parties to the proceedings * * *. No showing which any one of the tenants might have made with respect to his own situation and necessities could have had the slightest bearing upon the Administrator's determination of the question raised by the landlord's petitions" (p. 77). However, the showing which the tenants made concerning the fraud, misrepresentation and the failure to comply with its regulation as to cash payment, had every bearing on the determination by the Chief Branch Attorney, and his superiors, on the validity of granting the "purchasers'" application. It was not the showing as to petitioners' "own situation and necessity", but the attack upon the validity of the application to oust the petitioners that was of importance. Petitioners had and have a very real interest in the denial of the applications for certificates authorizing their eviction.

4. *One of the fundamental purposes of the defense housing provisions of the Emergency Price Control Act and the Regulation was to permit continued occupancy of defense*

housing of which tenants were in possession, and not merely to regulate the price of defense housing accommodations. The tenants, therefore, were "aggrieved" by the dismissal of their protest, with standing to file a complaint under Sec. 204 (a) of the Emergency Price Control Act, and were "subject to" respondent's order, with standing to file a protest under Sec. 203 (a) thereof.

The basic issue with which the majority and minority of the Court below were concerned related to the fundamental purpose of the Emergency Price Control Act and the regulations promulgated pursuant thereto. The majority held that "an examination of the Emergency Price Control Act discloses that it was not one of its purposes to give to tenants any right to remain in possession of the Defense-Area Housing accommodations which they might happen to occupy * * * its sole purpose * * * was to control the amount of rents of such accommodations and to prevent speculative, unwarranted and abnormal increases therein" (p. 76).

The minority specifically disagreed with this construction and stated: "Contrary to the conclusion entertained in the majority opinion, I am of the view that one of the purposes of the Emergency Price Control Act was to give to tenants a right to remain in possession of the defense rental area housing accommodations which they might happen to occupy, except for good and sufficient reasons to the contrary * * *" (p. 84).

The consequence of the majority viewpoint is that petitioners having no right to occupancy, are not parties "subject to" respondent's order authorizing their eviction. The result of the minority opinion constitutes petitioners as subject parties, since their right to continue in occupancy is affected by the respondent's order.

Both the wording of the Act and the Regulation show the clear intention of Congress to protect tenants, in the extremely critical housing shortage, in their right to continued occupancy of defense-housing. It is untenable to

differentiate between the regulation of reasonable rental of defense housing accommodations and the right to continuing occupancy thereof. One is a function of the other, and Congress surely had in mind the continued possession of premises in defense housing areas as well as the payment of reasonable rental therefor.

In the Statement of Purposes of the Price Control Act (Sec. 1(a)), it is declared that "the purposes of this Act are to stabilize prices and to prevent speculative, unwarranted and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcity caused by or contributing to the national emergency * * * to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living."

In Sec. 2 (d) of the Act, it is provided:

> "Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit * * * speculative or manipulative practices or renting or leasing practices (*including practices relating to recovery of the possession*) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or likely to result in * * * rent increases * * * inconsistent with the purposes of this Act." (Italics supplied.)

By the foregoing section, the Administrator is empowered to issue regulations to effectuate the purposes of the Act, by prohibiting or regulating speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of possession) in connection with any

defense-rental area housing accommodations, *which in his judgment are likely to result in rent increases*, inconsistent with the purposes of the Act.

The authority of the Administrator—*which is specifically referred to in the above section of the Act*—to regulate practices relating to the recovery of the possession, may be incident to his control over improper rent increases. But his power to issue regulations with regard to rents and tenancies is not limited to such regulation as is necessary to prevent improper rent increases.

In Sec. 2(g), the Administrator is granted broad general powers to issue regulations to prevent the circumvention or evasion of the Act. Since the purpose of the Act, as stated therein, is to eliminate and prevent manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency, and to protect persons with relatively fixed and limited incomes from undue impairment of their standard of living, which circumvent or evade the Act, the issuance of any regulations for the purpose of protecting such persons from impairment of their standard of living, or to prevent such manipulations and disruptive practices, is authorized by the Statute and is within the intended ambit of its operation.

Whether the purpose of the Act is to restrict the right of a landlord to evict a tenant from his quarters—as well as to establish maximum rents that may be exacted—may be ascertained from an examination of the following provisions of the Statute: In Sec. 2(b) of the Act, it is provided that the Administrator may adopt regulations fixing the rent to be charged; and in Sec. 2(d), above quoted, the Administrator may restrict the owner's right to terminate the tenant's occupancy, if, in his judgment, it is likely to result in rent increases. In Sec. 2(g) of the Act, it is provided that regulations issued under the Act shall con-

tain such provisions as the Administrator deems necessary to prevent the circumvention or evasion thereof, and Secs. 4(a) and 4(b) provide that it shall be unlawful to violate the regulation fixing rents *or to remove or attempt to remove the tenant,* or to refuse to renew the lease, because such tenant or occupant has taken, or proposes to take action as required by the Act or regulation or order or requirement thereunder.

From the foregoing, it would appear that one of the purposes of the Statute is to protect the tenants against being forced out of their housing accommodations, without good reason.

In *Snyder* v. *Reshink*, 131 Conn. 252, 38 A. (2d) 803 the Supreme Court of Errors of Connecticut, in discussing the purposes of the Emergency Price Control Act, observed:

> "The context of the statute in so far as applicable to rents leaves no doubt that a primary purpose is to protect the tenant in defense rental areas, not only against the exaction of excessive rents but also against being forced, without good and sufficient reason, by the owner to move out and seek quarters elsewhere. Looking to the accomplishment of these ends, the Act provides for the adoption by the Administrator of regulations fixing the rent to be charged and also restricting the owner's right to terminate the tenant's occupancy."

CONCLUSION.

For the above reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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